

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PAUL J. McNALLY, as he is TRUSTEE,
MASSACHUSETTS LABORERS' HEALTH AND
WELFARE FUND and NEW ENGLAND LABORERS'
TRAINING TRUST FUND; JAMES MERLONI, JR.,
as he is TRUSTEE, MASSACHUSETTS LABORERS'
PENSION FUND and MASSACHUSETTS LEGAL
SERVICES FUND; MARTIN F. WALSH, as he is
TRUSTEE, MASSACHUSETTS LABORERS'
ANNUITY FUND,

Plaintiffs

C.A. No. 03-12550 NG

vs.

ODF CONTRACTING CO., INC.,
Defendant

and

CITIZENS BANK,
Trustee

AFFIDAVIT OF PHILIP MACKAY

1. My name is Philip Mackay. I am the Collections Agent for the Massachusetts Laborers' Benefit Funds ("the Funds"). In my capacity as Collections Agent I review the audits of and payments by delinquent contractors.

2. On or about June 16, 2003, an auditor employed by Plaintiff Funds conducted an audit of ODF's books and records for the period November, 2002 through April, 2003.

3. The Funds' auditor determined that ODF owed the Funds \$78,892.18 in unpaid contributions for the period covered by the audit, together with \$65,326.82 in underpayments and interest on late paid contributions.

4. On or about June 19, 2003, a letter was sent from the Funds' auditor to ODF, notifying it of the unpaid contributions and outstanding accounts receivable.

5. On or about October 8, 2003, the Funds' auditor conducted a second audit of ODF's books and records, this time for the period May through August, 2003.

6. The Funds' auditor determined that ODF had accrued a new liability of \$146,297.55 for the new audit period and owed \$68,169.37 in underpayments and interest on late paid contributions.

7. On or about October 17, 2003, a letter was sent from the Funds' auditor to ODF, notifying it of the new delinquency.

8. Since this audit, the Funds have collected monies owed by ODF from certain third parties, thereby reducing the audit balance to \$80,481.08. However, ODF has paid no contributions for work it has performed between September 1, 2003 and the present and owes an as yet unliquidated amount for that period.

9. To date, ODF has failed and refused to pay the Funds the \$80,481.08 in contributions still due for the period May through August, 2003 and has accrued an additional obligation for the period September, 2003 through the present. It also still owes the underpayments and interest due on late payments, which amount has increased to \$70,848.12.

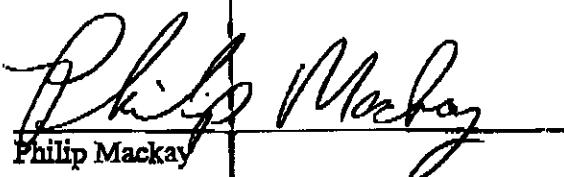
10. Article XX of the collective bargaining agreement ("Agreement"), to which ODF is a signatory, provides for interest to be paid by the employer on delinquent contributions. It also provides for liquidated damages equal to the unpaid interest or in an amount of 20% of the amount of the delinquency or such other percentage as may be permitted under federal or state law.

11. We have calculated the interest that would be due on the \$80,481.08 in unpaid contributions if payment were received by December 31, 2003. That figure would be \$3,435.98.

12. Finally, I have calculated the liquidated damages due under the terms of Article XX of the collective bargaining agreement. That figure would be \$16,096.22.

13. ODF's total liability, through August, 2003, is \$170,861.40.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 23rd DAY OF DECEMBER, 2003.


Philip Mackay